

Message Text

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ACTION ORM-02

INFO OCT-01 IO-13 ISO-00 L-03 CIAE-00 DODE-00 PM-04 H-02

INR-07 NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15

USIA-15 DHA-02 VO-03 SCA-01 INSE-00 SY-05 USSS-00

AF-08 ARA-10 EA-09 EUR-12 NEA-10 OIC-02 /134 W

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R 251019Z JAN 77

FM USMISSION GENEVA

TO SECSTATE WASHDC 4723

INFO USMISSION USUN NEW YORK

UNCLAS SECTION 1 OF 2 GENEVA 0471

E.O. 11652: N/A

TAGS: SREF, UNHCR

SUBJECT: TERRITORIAL ASYLUM CONFERENCE - U.S. STATEMENT ON
ARTICLE 2

1. U.S. STATEMENT ON ARTICLE 2 IN COMMITTEE OF THE WHOLE, MORNING
JANUARY 24, WAS AS FOLLOWS.

QUOTE. MR. CHAIRMAN, THE UNITED STATES FINDS GENERALLY ACCEPTABLE
THE TEXT OF ARTICLE 2 IN THE DRAFT CONVENTION APPROVED BY THE GROUP
OF EXPERTS. WE FAVOR IN PARTICULAR THE ELIGIBILITY CRITERIA SET
FORTH IN PARAGRAPH 1 OF ARTICLE 2. THEY ARE BROAD AND GENER-
AL YET COMPREHENSIVE IN THEIR COVERAGE OF POTENTIAL REASONS FOR
PERSECUTION. I SHOULD LIKE TO POINT OUT THAT ARTICLE 2 OF THE
EXPERTS' TEXT IS PATTERNED AFTER THE ELIGIBILITY CRITERIA AND
PROVISIONS OF THE 1951 REFUGEE CONVENTION.

MY DELEGATION HAS NOTED THE PROPOSED AMENDMENT OF ARTICLE 2,
PARAGRAPH 1, SUB-PARAGRAPH (A) OF THE DISTINGUISHED DELEGATE OF
THE USSR, AS CONTAINED IN DOCUMENT L.23. THIS WOULD ADD, IN VERY
SPECIFIC TERMS, A NUMBER OF ADDITIONAL CIRCUMSTANCES WITH PURPOR-
TEDLY WOULD GIVE RISE TO REASONS FOR PERSECUTION. THE DELEGATE
FROM CUBA, IN PARAGRAPH 1(A) OF DOCUMENT L.32, HAS SET FORTH MUCH
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THE SAME FORMULA. WE JOIN THE DISTINGUISHED DELEGAGE FROM AUSTRALIA
IN HIS COMMENTS OF LAST WEEK IN OPPOSITION TO SUCH PROPOSED
CHANGES. THE UNITED STATES GOVERNMENT BELIEVES STRONGLY THAT THE
CITATION OF REASONS FOR POSSIBLE PERSECUTION AS CONTAINED IN THE
EXPERTS' TEXT SHOULD REMAIN GENERAL IN NATURE. THEY HAVE SERVED
THE INTERNATIONAL COMMUNITY WELL FOR A QUARTER OF A CENTURY WITH
NO CONSPICUOUS SHORTCOMINGS. ON THE OTHER HAND, TO ATTEMPT TO LIST

IN SPECIFIC TERMS THE VARIOUS TYPES OF REGIMES IN WHICH PERSECUTION COULD TAKE PLACE WOULD BE A FAR-REACHING AND A DANGEROUS EXERCISE. TO DO SO WOULD BE TO RUN THE RISK OF OMISSIONS WHICH MIGHT TEND TO EXCLUDE LARGE NUMBERS OF REFUGEES FROM COVERAGE. CERTAINLY, THE LISTS AS OFFERED IN THE PROPOSED AMENDMENTS BY THE GOVERNMENTS OF THE USSR AND CUBA OMIT CONSPICUOUSLY CERTAIN TYPES OF REGIMES FROM WHICH, AS OUR AUSTRALIAN COLLEAGUE HAS NOTED, THERE HAVE BEEN VERY LARGE NUMBERS OF REFUGEES WHO WOULD NOT BE COVERED UNDER THE PROPOSED AMENDMENTS CITED.

IN THIS CONNECTION I WOULD RECALL THAT THE UNITED STATES, IN ITS COMMENTS TO THE SECRETARY GENERAL ON THE GROUP OF EXPERTS' TEXT, STATED ITS CONCLUSION THAT THE REFERENCE TO "COLONIALISM AND APARTHEID" IN ARTICLE 2(1) (A) SHOULD BE DELETED, SINCE THEY ARE ALREADY COVERED BY THE GENERAL FORMULATION IN THAT PARAGRAPH.

THE VERY SAME REASONS WHICH I HAVE JUST ADDUCED COMPEL US TO OPPOSE THE AMENDMENT OFFERED BY SOME 15 NATIONS, AS SET FORTH IN CONFERENCE DOCUMENT L.29/REV.1, WHICH ADDS THE WORDS "FOREIGN OCCUPATION, ALIEN DOMINATION AND ALL FORMS OF RACISM." SUCH AMENDMENTS IF ADOPTED WOULD POSE A DISTINCT HAZARD THAT THE CONVENTION COULD BE APPLIED IN A FAULTY AND PREJUDICIAL MANNER. TO THE EXTENT THAT THERE IS GENERAL AGREEMENT WITHIN THE UNITED NATIONS ON THE CONTENT OF THESE TERMS, THEY ARE ALREADY COVERED BY THE GENERAL FORMULATION. THESE AMENDMENTS WOULD ACCORDINGLY POSE A DISTINCT DANGER THAT GENERAL ACCEPTANCE OF THE CONVENTION WOULD NOT BE POSSIBLE.

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AS FOR THE EXCLUSION PROVISIONS OF ARTICLE 2, AS CONTAINED IN PARAGRAPH 2 OF THE EXPERTS' TEXT, THESE CRITERIA, TOO, HAVE STOOD THE TEST OF TIME. THE UNITED STATES, HOWEVER, IS RECEPTIVE TO THE PROPOSAL OF INDONESIA, MALAYSIA AND PHILLIPPINES, IN PARAGRAPH 3 OF CONFERENCE DOCUMENT L.12, THAT A NEW PARAGRAPH BE ADDED UNDER WHICH THE PROVISIONS OF PARAGRAPH 1 OF ARTICLE 2 WOULD NOT APPLY TO ANY PERSON WHOSE PRESENCE IN THE TERRITORY OF A CONTRACTING STATE WHERE HE SEEKS ASYLUM WILL CONSTITUTE A THREAT OR DANGER TO THE SECURITY OF THAT STATE. THE UNITED STATES IS LIKEWISE SYMPATHETIC IN PRINCIPLE TO THE ISRAELI PROPOSED AMENDMENT OF ARTICLE 2 PARAGRAPH 2 AS CONTAINED IN CONFERENCE DOCUMENT L.40. WE ARE NOT WEDDED TO ANY SPECIFIC FORMULA, AND WE NOTE IN THIS CONNECTION THAT THE NETHERLANDS HAS PROPOSED VERY HELPFUL LANGUAGE IN CONFERENCE DOCUMENT L.46. IN ANY EVENT, THERE SHOULD BE NO DOUBT IN ANYBODY'S MIND THAT SUCH ACTIONS AS ARE COVERED BY THE ISRAELI AND NETHERLANDS TEXTS, CONSTITUTE CRIMES WHICH WOULD IN FACT BE SERIOUS COMMON OFFENSES UNDER THE LAWS AND REGULATIONS OF MOST CONTRACTING STATES GRANTING ASYLUM AND THAT THEY CANNOT IN ANY EVENT BE VIEWED AS PERMISSIBLE

POLITICAL ACTIONS. WE WOULD ADD TO THAT STATEMENT OUR VIEW THAT A GRANT OF ASYLUM UNDER THE CONVENTION DOES NOT DEBAR PROSECUTION BY THE GRANTING STATE OF AN ASYLEE FOR SUCH ACTS OVER WHICH IT HAS JURISDICTION.

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INFO OCT-01 IO-13 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07
L-03 NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15 USIA-15
DHA-02 VO-03 SCA-01 INSE-00 SY-05 USSS-00 AF-08
ARA-10 EA-09 EUR-12 NEA-10 OIC-02 /134 W
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THE UNITED STATES HAS NOTED THE PROPOSAL OF THE DISTINGUISHED DELEGATES OF CZECHOSLOVAKIA AND POLAND, IN CONFERENCE DOCUMENT).33 THAT PARAGRAPH 2(B) OF ARTICLE 2 BE AMENDED TO PROVIDE FOR THE EXCLUSION FROM ELIGIBILITY, INTER ALIA, OF A PERSON WHO HAS COMMITTED A SERIOUS COMMON OFFENSE UNDER THE LAWS AND REGULATIONS OF THE CONTRACTING STATE OF NATIONAL OR HABITUAL RESIDENCE OF THE PERSON SEEKING ASYLUM. A SIMILAR PROPOSAL WAS TABLED BY THE DELEGATE FROM CUBA UNDER PARAGRAPH 2(B) OF CONFERENCE DOCUMENT).32. MR. CHAIRMAN, SUCH A PROPOSAL IF IMPLEMENTED WOULD, I SUBMIT, DECIDEDLY BEG THE ISSUE IN THE CASE OF MANY REFUGEES. THERE ARE A NUMBER OF COUNTRIES WHOSE CRIMINAL LAWS AND REGULATIONS PROVIDE PENALTIES, OFTEN SEVERE, FOR PERSONS WHO DEPART THE COUNTRY WITHOUT PERMISSION AND FOR PERSONS WHO SEEK ASYLUM ABROAD. MY GOVERNMENT HOLDS THE FIRM BELIEF THAT REFUGEES, CONSISTENT WITH ARTICLE 14(1) OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, HAVE THE RIGHT TO SEEK AND TO ENJOY ASYLUM IN OTHER COUNTRIES. SURELY, WE SHOULD NOT LEGISLATE AN ASYLUM TREATY WHICH COULD HAVE THE EFFECT IN MANY INSTANCES OF PENALIZING THE REQUEST FOR ASYLUM AS A POTENTIALLY CRIMINAL ACT.

I SHOULD LIKE BRIEFLY TO ENDORSE SEVERAL OTHER PROPOSALS WHICH HAVE BEEN MADE. WE WOULD CONCUR WITH THE PROPOSAL OF ECUADOR, GUATEMALA AND MEXICO, IN PARAGRAPH 3 OF DOCUMENT L.35, TO ADD A
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PARAGRAPH PROVIDING THAT IT SHOULD BE THE RESPONSIBILITY OF THE STATE ASYLUM TO ASSESS THE MATTER OF OFFENSES OR THE REASONS FOR PERSECUTION. ALTHOUGH WE BELIEVE THAT THIS FACTOR IS ALREADY COVERED IN EFFECT BY THE PROVISIONS OF ARTICLE 9 OF THE EXPERTS' TEXT, WE WOULD CONCUR IN THE ADDITION OF THIS FORMULATION AS A HELPFUL MEASURE. THE DISTINGUISHED DELEGATION OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, IN DOCUMENT L.37, HAS SUGGESTED THAT IN PARAGRAPH 1(B) OF ARTICLE 2 THE WORD "ACTS" SHOULD BE REPLACED BY "REASONS." WE APPROVE OF THIS CHANGE. THE UK DELEGATION HAS ALSO, IN CONFERENCE DOCUMENT L.39, PROPOSED THAT IN ARTICLE 2, PARAGRAPH 2(B), THE WORDS "COMMON OFFENSE" BE REPLACED BY "NON-POLITICAL OFFENSE." WE WOULD CONCUR IN THIS ALSO, AND WOULD SUGGEST THAT IT COULD BE STRENGTHENED FURTHER BY AMENDING THE LANGUAGE SO THAT INSTEAD OF READING "A SERIOUS NON-POLITICAL OFFENSE", AS IT WOULD IN THE UNITED KINGDOM PROPOSAL, THAT THE LANGUAGE SHOULD READ "A SERIOUS NON-POLITICAL CRIME." THIS WOULD BE CONSISTENT WITH ARTICLE 1.F.(B) OF THE 1951 REFUGEE CONVENTION.

THANK YOU, MR. CHAIRMAN. END QUOTE.

2. STATEMENT CONSIDERABLY EDITED TO MEET TIME LIMITS IMPOSED BY CHAIRMAN THIS MORNING: 10 MINUTES ON FIRST STATEMENT, 5 MINUTES ON SUBSEQUENT STATEMENT. CHAIRMAN CUT OFF MICROPHONE OF USSR DELEGATE THIS MORNING AFTER HE EXCEEDED THE 5 MINUTES GRANTED HIM FOR RIGHT OF REPLY. THIS PLEASED SOME OF US. CATTO

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Message Attributes

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Decaption Note:
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